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Standing Committee on International Trade

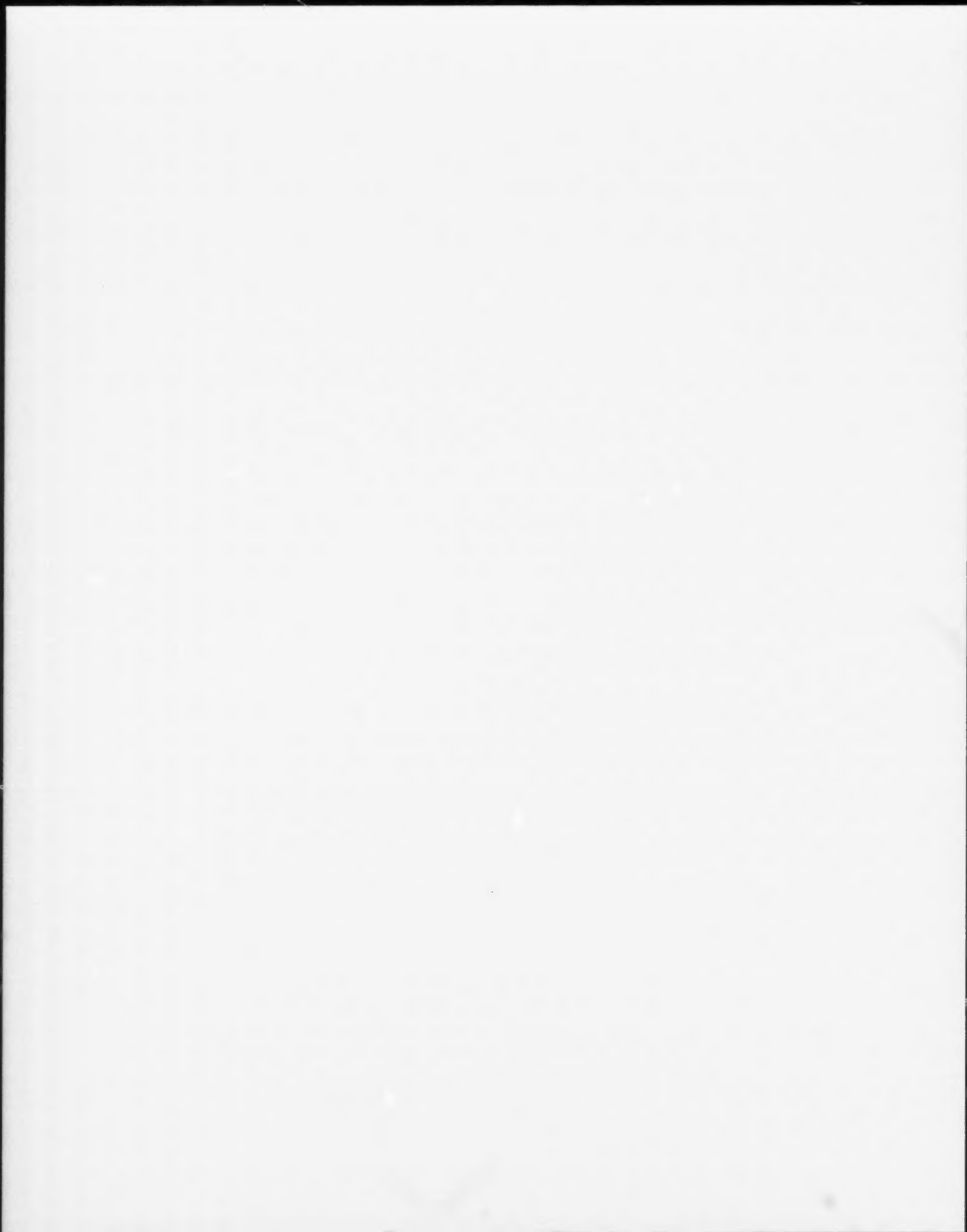
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Chair

The Honourable Mark Eyking



Standing Committee on International Trade

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• (1130)

[English]

The Chair (Hon. Mark Eyking (Sydney—Victoria, Lib.)):
Order.

Welcome back, everyone.

As everybody knows, we had the votes in the House on Bill C-79, the CPTPP, and it has been forwarded to us for review in order to report back to the House.

We'll proceed with the officials with us here today. Thank you for coming. The officials are going to give a short presentation, and then we're going to get a few questions from the committee members, if they have any questions. When we wrap that up, we'll go into clause-by-clause study.

Without further ado, Mr. Christie, thank you for coming and bringing your officials. You have the floor.

[Translation]

Mr. Bruce Christie (Associate Assistant Deputy Minister, Trade Policy and Negotiations and Lead Negotiator of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Department of Foreign Affairs, Trade and Development): Thank you, Mr. Chair.

Good morning everyone.

As you may know, my name is Bruce Christie. I am the Lead Negotiator of the Government of Canada for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the CPTPP.

I am joined today by a number of my colleagues, including Kendal Hembroff, Director General of the Trade Negotiations Bureau at Global Affairs Canada, who is also Deputy Chief Negotiator for the CPTPP. A number of subject matter experts are also present, several of whom participated in the CPTPP or original TPP negotiations.

[English]

I'm very pleased to have this opportunity to discuss Bill C-79 and the CPTPP with you today. Following my brief remarks, we'll be happy to take your questions and provide any further details on the text of the agreement and the bill itself.

By way of brief summary, the CPTPP is a comprehensive, modern free trade agreement that covers virtually all aspects of international trade policy across 30 chapters in total. It incorporates, by reference,

a majority of provisions of the original TPP agreement with updated procedures on withdrawal, accession, and review of the agreement, as well as 22 suspended provisions.

Once fully implemented, the agreement will provide preferential access for Canadian goods, eliminating 95% of tariff lines among the CPTPP parties. This covers 99% of Canada's current export to CPTPP partners.

To support the benefits of trade tariff elimination and facilitate merchandise trade, the CPTPP includes chapters dedicated to establishing clear rules for goods market access, including national treatment, rules of origin, and streamlining customs procedures.

Beyond goods, the agreement also enhances Canada's access to CPTPP markets with respect to services, investment, and government procurement. Another chapter is dedicated to facilitating labour mobility to enable certain highly skilled business people and professionals to enter and work in CPTPP markets on a temporary basis.

Finally, the CPTPP also features chapters dedicated to the protection of the environment and labour rights. These chapters are enforceable through the agreement's dispute settlement mechanism.

In addition to the main text, Canada secured a number of bilateral side instruments with CPTPP members to build upon the agreement's outcome in areas such as autos and culture.

What does all this mean to the Canadian economy? The CPTPP will create the largest trading bloc covering the Asia-Pacific region, spanning 11 markets that represent close to 500 million people and 13.5% of global GDP.

The CPTPP also provides Canada with preferential access to seven new free trade partners, notably Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam. The CPTPP will open up the Japanese market in areas where Canadian exporters have historically faced high tariffs and other barriers to entry. This will level the playing field for Canadian companies with respect to competitors such as Australia, which already have preferential access to the Japanese market. It will also help Canadian companies gain an advantage over competitors without such preferential access, such as the United States.

Beyond Japan, the CPTPP will also allow Canada to have preferential access to some of Asia's fastest-growing markets such as Malaysia and Vietnam, and the economic benefits of the agreement are expected to be wide-reaching, spanning agriculture, fish and seafood, forestry, mining, industrial machinery, services, and investment. The government estimates that implementing and ratifying the CPTPP will generate long-term GDP gains of \$4.2 billion.

The agreement's high-standard rules help ensure Canadian companies, large or small, have meaningful gains from enhanced access to the Asia-Pacific region.

The agreement and its benefits to Canada will continue to grow as new economies join the accession process. In fact, a number of economies have already indicated an interest in acceding to this agreement after it enters into force, notably Colombia, Korea, Thailand, Taiwan, and the United Kingdom. Negotiations on the accession of new members will begin after the CPTPP enters into force.

The agreement will enter into force 60 days after six of the signatories have ratified the agreement. Three members have already completed the ratification process: Mexico, Japan, and Singapore. The timing of other members' ratifications is not clear at this point, but we're certainly expecting that six countries will have ratified this agreement by the end of this year and possibly sooner.

In closing, Mr. Chair, I would like to say that Bill C-79 will amend a number of federal statutes and provide the necessary authorities for Canada to meet its obligations under the CPTPP. Following royal assent, federal departments will carry forth their required regulatory amendments, after which Canada will notify the CPTPP depository that it has ratified the agreement.

This concludes my opening remarks, Mr. Chair, and now we will be happy to take your questions on Bill C-79 and the CPTPP in general.

• (1135)

The Chair: Thank you, sir.

We're going to go right to some questions. I think we will go to Mr. Allison, then Ms. Ramsey and Mr. Peterson.

Mr. Allison, go ahead.

Mr. Dean Allison (Niagara West, CPC): Thanks to the officials for being here, and thanks for waiting. We had some in camera business to take care of.

Mr. Christie, you mentioned you thought we would have six countries ratified before the end of the year. You gave us an update on who has already ratified, as we know. Who do you see as being close, and when do you see all those other countries potentially ratifying the deal?

Mr. Bruce Christie: As I mentioned, so far Japan, Mexico, and Singapore have completed their processes. I was informed by my Japanese counterpart a couple of days ago that through their discussions with various countries, they have been informed that New Zealand and Australia will likely complete their processes by the end of November. We're also anticipating Vietnam to have possibly completed their process further through their National

Assembly discussions next month. Then, last, Chile has indicated that they are proceeding on an expedited basis, and they could be ready to ratify by the end of November.

We would fully expect at this point that we will have six countries complete the ratification process by the end of the year, if not sooner.

Mr. Dean Allison: Along with that, obviously, we have talked about first mover advantage forever. It's always the point of the first six.

Talk to us briefly about the advantages and disadvantages of being the first mover, part of the first six.

Mr. Bruce Christie: Essentially, once the sixth country has ratified the agreement, then the 60-day clock starts, after which time the agreement enters into force. At that point, the first wave of tariff cuts starts on the day of entry into force. Japan will do its second tariff cut soon after that, I believe on January 1.

Ms. Kendal Hembroff (Director General, Trade Negotiations, and Deputy Chief Negotiator, Department of Foreign Affairs, Trade and Development): It's April.

Mr. Bruce Christie: It's April 1. Thank you.

Some countries are delaying their ratification processes. If Canada, for example, were in that category of countries, we could see two tariff cuts undertaken by countries such as Japan. The countries that have ratified the agreement will determine the pace at which tariffs are cut, or we catch up to them, by consensus. Once we have completed our ratification process, it would be beyond Canada's control whether we're invited to make our initial tariff cuts right away or whether they are going to delay us by a year. In the case of some products, a country like Australia could be granted preferential access to Japan a year or two before we are.

Mr. Dean Allison: The last question I have is around non-tariff barriers. Obviously, the auto sector has some concerns, certainly around Japan.

I have a couple of questions in terms of a commitment to the side letter and enforcement around some of the non-tariff barriers. Can you talk about that a little bit? That has always been a concern of the auto industry, and we can't pretend that it's still not an issue.

Talk to us about enforcement and how we remove and deal with some of those issues as we go forward.

Mr. Bruce Christie: Throughout the government's consultations with the auto sector, we did hear that the tariffs were not really the issue—Japan doesn't have an auto tariff—but that some of the non-tariff barriers that they were facing were. Our sense is that the major non-tariff barrier for a Canadian auto producer is right-hand drive vehicles. They would obviously have to produce right-hand drive vehicles to penetrate the Japanese market.

Through the original appendix in the TPP agreement, and based on some of the concerns we heard expressed by Canadian auto producers, we did negotiate a binding and enforceable side letter with Japan that deals with some of these non-tariff barriers that were addressed through our consultations, namely noise and emissions reductions and preferential access to financing given by Japanese dealerships to Canadian cars, among others.

This letter between Minister Champagne and his Japanese counterpart that we signed establishes the rules of dispute settlement using the dispute settlement chapter of the original TPP agreement, which makes those provisions enforceable.

Mr. Dean Allison: All right. The enforcement will be through that mechanism.

Mr. Bruce Christie: That's correct.

The Chair: Thank you, Mr. Allison.

Ms. Ramsey is next.

Ms. Tracey Ramsey (Essex, NDP): Thank you, Chair, and thank you to our witnesses for being here today.

For my first question, I'll pick up on Mr. Allison's point on the auto sector. As you know, the auto sector is under tremendous pressure right now in terms of Canadian auto manufacturers right down to the supply chain, with the Canadian Association of Moldmakers opposed to the signing of the CPTPP. In the middle of a NAFTA round, when they're trying to achieve something better, they find it quite threatening that we're essentially showing our hand and giving away worse provisions to smaller countries. I don't think it comes as a surprise to you that they're quite unhappy with the signing of this agreement at this particular moment in time, but overall as well, they've been quite vocally opposed to it.

The question that's coming from them and that I have a question for you about is the side letter or the actual negotiated agreement. If we come out of NAFTA with something, is there any way to put language into the CPTPP now to say that we would mirror what we have in NAFTA? Why would we be offering better terms to these smaller countries than we would to our largest trading partner? There's going to be an immediate de-harmonization if we come out with something better in NAFTA than we do in the CPTPP. Is there any ability once NAFTA is negotiated to amend the auto provisions to reflect that?

• (1140)

Mr. Bruce Christie: Well, if you look at the CPTPP countries, you can see that the only country that will export automobiles to Japan under this agreement is Japan.

After the 6.1% Canadian tariff is eliminated, they will have the ability to export vehicles into Canada duty free as long as they meet the 45% regional value content. As you know, that 45% rule of origin is lower than the current 62.5% under the NAFTA. I would seriously doubt, given that for a country like Japan their key ask and interest in the Canadian market is our elimination of the vehicle tariff, so any discussion.... It was made clear throughout the CPTPP consultations that we were committed not to change any of the market access provisions in the original agreement. We kept to that. We did only suspend 22 provisions, mostly related to ISDS and intellectual property.

I don't believe that Japan would have any interest in agreeing to us harmonizing the rules of origin agreed to and negotiated under the CPTPP with that of a future NAFTA outcome.

Ms. Tracey Ramsey: I suppose my question is, really, is that possible? Is it possible to revisit it afterward? Is it possible to bring a proposal to them based on information that you would receive from the Canadian auto sector?

Mr. Bruce Christie: I suppose so. We have a built-in clause in the CPTPP that allows us to meet every three years to review the implementation of the agreement, at which point all members are free to propose amendments to the agreement, or other changes based on their perception of how the agreement is being implemented. Yes, in theory, we could propose that type of amendment.

Ms. Tracey Ramsey: The next question I have is on intellectual property. The suspended provisions include those around patent term extensions. This is great, but of course there's the concern that these provisions will come back to life at some point in time, potentially if the U.S. decides to rejoin. These are certainly provisions that they pushed for in the original TPP. If that's the case, could the patent term extensions be granted retroactively? Is that part of the language in the CPTPP?

Mr. Bruce Christie: Let me answer generally first.

I don't believe they would be. Any of the 22 suspensions can only be reinstated by consensus of all CPTPP parties.

Even in the event that the United States decided that it was interested in returning to the agreement, those suspensions, including the patent term extension, would not automatically be lifted. They can only be lifted if all parties agree to it.

No, there is no retroactivity applied—only at the entry into force.

Ms. Tracey Ramsey: Of the 22, could retroactivity apply to any of those suspended provisions?

Mr. Bruce Christie: No, not to my knowledge.

Ms. Tracey Ramsey: Have you received feedback from stakeholders about proposed amendments to Bill C-79?

Mr. Bruce Christie: I have not received any proposed amendments.

Ms. Tracey Ramsey: In the clause-by-clause study today, we are going to be looking at the seven acts that this bill seeks to amend. I appreciate your opening remarks, but we didn't hear reference to that specifically. Can you give us a brief overview of the seven acts that we're looking at amending in the clause-by-clause examination today?

• (1145)

The Chair: You're way over five minutes.

Ms. Tracey Ramsey: I didn't realize we were timed.

The Chair: I'm trying to keep around five minutes for everybody, because we have a few more. If that can be answered quickly, then we can move over to Mr. Peterson. You can come back to it. I'm fine with that.

Mr. Bruce Christie: If the committee agrees, perhaps we can come back to it once we get into the clause-by-clause part of the discussion.

The Chair: Go ahead, Mr. Peterson.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thanks again for being with us.

I have a couple of questions.

The dispute settlement mechanism was one of the changes from the original TPP agreement. Can you briefly elaborate on the differences between the old ISDS and what we have now in this new agreement?

Mr. Bruce Christie: I'm going to call on the negotiator who is responsible for the ISDS provisions and who can provide more precision to answer your question.

Mr. Kyle Peterson: Perfect. Thanks, Mr. Christie.

Ms. Julie Boisvert (Deputy Director, Investment Trade Policy, Department of Foreign Affairs, Trade and Development): The ISDS process is the same. In the original TPP, the scope of potential dispute had been broadened to include investment authorizations and investment agreements. Those two provisions were suspended. That's why there seems to be many suspensions in the investment chapter, but it's all references or definitions, and then the specific clause.

Those were the only elements that went beyond the usual investment chapter that Canada has done in the past. They were suspended, and everybody agreed to it.

Mr. Kyle Peterson: That's one of the 22 suspensions. When we talk about it, that's one of them.

Thank you for that. I have one more question.

The importance of it being one of the first six has been explained already, but can you elaborate on the importance of the agreement from an economic standpoint beyond the increase in the GDP that you talked about—\$4.2 billion over the long term? Is there any analysis, or a concept economically, that this is a good deal—not only because of the economic impact of the deal, but because we're also negotiating NAFTA and this is a good way for Canada to diversify its markets, and there's value in that on its own? Has that been analyzed at all? Is there any way to quantify what that value might be?

Mr. Bruce Christie: Our office of the chief economist did an economic study looking at what the impact on trade and investment into Canada will be as a result of the ratification implementation of this agreement. We looked at how, especially given the fact that the United States had decided not to participate in the agreement....

We're anticipating through the study that yes, it's been reported that there will be some initial losses in the auto sector, but there will be significant gains in exports for Canada in key export sectors such as beef, pork, dairy, other agricultural products, forestry, lumber, fishing, mining and extraction, manufacturing, and services.

We see significant increases. I can give you some of the numbers. We see a 9.3% increase projected in agriculture, 36.6% in beef exports, 29% in pork, 10% in forestry and lumber, etc.

Through the economic modelling performed as part of the study done by Global Affairs Canada's chief economist, we see significant gains in our key export sectors as a result of this agreement.

Mr. Kyle Peterson: Thank you for that. I'm probably out of time.

The Chair: We'll now go to Mr. Carrie.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

I want to take this opportunity to thank the officials here. I know it's been quite a busy time, and the hard work you've put into this file is extremely important.

I want to talk a little about the historical context, because, you know, hindsight is always 20/20. In November 2015, just a couple of weeks after the election, Mr. Trudeau and Mr. Obama had their first meeting, and I'm going to put a quote into the record here. Mr. Obama said, seated next to Mr. Trudeau in a small room following their first formal meeting:

We are both soon to be signatories to the TPP agreement, and that's another area where we can continue to have important discussions. I know Justin has to review what's happened, but we think that after that process has taken place that Canada and the United States and the other countries that are here can establish the kind of high-standards agreement that protects labor, protects the environment, protects the kind of high-value-added goods and services that we both excel at.

Now, this was a year before the election in the United States—and I know the President and the Prime Minister at the time were BFFs, and I think they still talk and get good advice—but one of the reasons that things were not moved forward was these other side agreements, so to speak.

I was wondering if you could comment on the big structural differences between the original TPP and the CPTPP. What are the big differences we're getting now that, if we signed on then, would cause that much of a difference? As my colleague was saying here, right now we're stuck in this NAFTA situation, and if we had signed with a willing president way back then, we may have been able to avoid some of this really stressful stuff that our industries have to face right now.

● (1150)

Mr. Bruce Christie: There aren't really any structural differences between the two agreements.

As I mentioned, after the United States announced its withdrawal or its intent not to ratify, Japan brought us together to discuss at the ministerial level how we could continue this process and not let all the good work go to waste. All of us who were dealing bilaterally with the United States through these negotiations and the original TPP made concessions in areas that we would have preferred not to. In the case of Canada and other countries, these concessions were bilateral in nature because we were negotiating bilateral access between the United States and Canada. I think it's fair to say that Canada really championed the process through the negotiations over the past year to lift the suspension of issues and provisions that were really unfavourable to us, and they were less meaningful to other commercial partners among the group, given that the United States was no longer there.

That was a very prolonged negotiating process. Some countries didn't want to see many provisions suspended at all, because they wanted to keep the door wide open for the United States to join. Others felt that it was better to suspend the provisions based on the commitments that we undertook in the TPP that were really bilateral in nature, but the TPP agreement remains. It's incorporated into the CPTPP by reference. All of that still exists. All we've done is lift 22 suspended provisions until such time as we agree to bring them back, and we set up a different legal instrument to bridge the gap between the two agreements and to deal with such issues as accession and whatnot.

Mr. Colin Carrie: That was kind of my follow-up.

Do I have time?

The Chair: If it's a quick one. We're running late.

Mr. Colin Carrie: Should Canada support the United States' accession to the CPTPP if it seeks to join the agreement? How would it likely affect Canada?

Mr. Bruce Christie: It is a hypothetical question you're posing. I have not seen any signals today under the current administration that the United States is interested in joining. Even if the United States decided under the current administration that it wanted to come back to the fold, we would expect that they would immediately want to lift the suspended provisions, and I would expect on top of that that they would make additional demands, because I don't think the current president likes the CPTPP agreement.

In terms of our view—and I don't speak for the country—my own personal view is that we would welcome any country to join this agreement if they're prepared to take on the high-standard, ambitious commitments made in the agreement. If they're not prepared to do that, then I don't think they'd be welcome to negotiate an accession process with us.

That said, the agreement was originally structured so it could expand. Hopefully one day, or ideally one day, it could include all 21 APEC economies, plus others. You heard from my opening remarks that the United Kingdom, which does have an island in the Pacific, has expressed an interest in joining if they separate from the European Union.

• (1155)

Mr. Colin Carrie: Thank you very much.

The Chair: Thank you, Mr. Carrie.

I'm trying to get to clause-by-clause study by 12:00, but Ms. May has said she would ask one small question, which will have a short answer, unless anybody objects to it.

Go ahead, Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thanks, Chair. This is a follow-up to Ms. Boisvert's comments.

Ms. Boisvert, I think I took the note down correctly, the one in which you referred to this TPP ISDS as not different from the usual ISDS we have done in the past. I don't think there is a usual ISDS. I'd love to be enlightened. We have the completely secretive chapter 11 of NAFTA and the very secretive Canada-China investment treaty. We have the more open CETA agreement, with its innovation of an investment court and access to open hearings, although it does not

allow interventions from friends of the court, which was originally proposed and taken out. In between, we have a lot of different agreements.

In your mind, what is the usual ISDS we have done in the past?

Ms. Julie Boisvert: A model was put in place in the original NAFTA, which we then followed. It's the same thing for the bilateral agreements. A model was put in place in 2004 that we then followed for FIPAs.

I think you were asking about transparency with respect to the process for the ISDS claims. There are transparency provisions in CPTPP. They were in the TPP agreement. They include open access to hearings and to documents being made available to the public.

The key difference, as I said earlier, between what was originally agreed to in the TPP agreement versus what we had done before was the reference to investment agreements. There could have been a breach-of-contract dispute between an investor and a country—for example, Canada—or an investor could have made a claim if an investment authorization had been withdrawn—for example, under the Investment Canada Act using the net benefit test.

Those were suspended because we had never included such provisions before. The Canadian position is to not include them. That's why we convinced the others to suspend them too.

The Chair: Thank you very much. That's going to be it for the dialogue back and forth.

Mr. Christie, I thank you and your group for coming here. I understand some of you are going to stay here for our clause-by-clause study.

We're going to suspend for four or five minutes so they can get their seating arrangements done, and then we're going to come right back. Feel free to grab a sandwich, and we'll get back to it.

• (1155)

(Pause)

• (1205)

The Chair: How many clauses do we have?

The Clerk of the Committee (Mr. Olivier Champagne): We have more than 50 clauses and 13 schedules.

The Chair: Okay.

Usually we take the first clause and park her down at the end, so pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed.

We'll go right to clause 2.

Mr. Randy Hoback (Prince Albert, CPC): Chair, there are no amendments. Can we not group all the clauses?

The Chair: We can if it's the will of the committee.

Ms. Tracey Ramsey: I do some have some questions about some of the clauses.

The Chair: Yes, are there are a couple that...

I can go in fives, let's say. I'll start off with four and then we'll take it by fives. We'll see how it goes. How's that? Is everybody good? Okay.

Shall clauses 2, 3, 4, and 5 carry?

Ms. Tracey Ramsey: No. I have a question on clause 4.

The Chair: Okay.

Ms. Tracey Ramsey: To the officials, I'm looking at clause 4, "Non-application of Act and Agreement to water". I wonder if you can explain this clause and how it might offer protection to Canadian surface and ground water. A lot of Canadians are worried about the possibility of bulk water exports from Canada. Would this clause protect against that?

Ms. Kendal Hembroff: The intent of this clause is just to make it clear that for greater certainty, natural surface and ground water is not subject to the CPTPP.

• (1210)

Ms. Tracey Ramsey: There's nothing in there that would protect us against the possibility of bulk water exports, then.

Ms. Kendal Hembroff: There's nothing specific in terms of this bill that would make that clear, but there's nothing in the CPTPP that allows for the export of bulk water either.

Ms. Tracey Ramsey: It says "the Agreement applies" to all of this. I'm asking how that will offer protection to Canadian surface and ground water.

Mr. Hugh Cheetham (General Counsel, Market Access and Trade Remedies Law Division, Department of Foreign Affairs, Trade and Development): It just makes it clear that water in its natural state we don't consider subject to the agreement. I think that's been in every free trade agreement bill we've implemented since NAFTA.

Ms. Tracey Ramsey: Okay. Thank you.

The Chair: I know there was a thought that we could group them, but I'm going to go one by one. We'll just go that way.

Should clauses 2, 3, and 4 carry?

(Clauses 2 to 4 inclusive agreed to)

(Clauses 5 and 6 agreed to on division)

(Clause 7 agreed to)

(On clause 8)

The Chair: We have an amendment from Ms. May. Everybody should have it in front of them.

When we're talking about this amendment, it has implications for PV-2, PV-3, and PV-4, so all of those amendments will be dealt with right now, really. That's how they're grouped together.

Do you want to talk on your amendment?

Ms. Elizabeth May: Yes, I do, Mr. Chair.

First, I have to put on the record a protest. I'm only here because of a motion passed by this committee at the beginning of its work in 2015. I objected to this motion at the time. It was one invented under the previous government to deny me my rights at report stage.

It's a clever piece of work to claim that since committees are the masters of their own process.... When every committee passes an identical motion that affects any member of Parliament who is not in

a recognized party to say that they will be invited to committee, the effect of that is to eliminate my rights, which exist under our Standing Orders, to present my amendments at report stage. Now that I have the opportunity to present them at committee, I no longer have the right to present substantive amendments at report stage.

My protest on the record is this. The motion you passed said that I must have 48 hours' notice, that I will be given 48 hours' notice to prepare amendments before clause-by-clause study. In this instance, we received the notice on Tuesday at 2 p.m. to have amendments prepared and submitted by Wednesday at 5 p.m., which is substantially less than 48 hours.

I mention this because since I'm not a member of the committee, all my amendments are deemed to have been submitted. I'm not allowed to vote on them. I am allowed to speak to them briefly, and I'm bearing that in mind. I just want to explain that I may try in report stage to submit additional amendments because the time of the notice was insufficient, even by the onerous provisions—and they are onerous, to me—of the motion by this committee and every other committee. It's astonishing when you consider that each individual committee is the master of its own process. The synchronicity of identical amendments is astonishing.

However, I'll pass over that and just say that I wanted to make it clear on the record that I did not have adequate notice to propose more than the four amendments I bring to you now.

The Chair: I'm not going to get into a debate about procedure, but my understanding is that it comes down to two sleeps. I think we're in order.

Ms. Elizabeth May: Mr. Chair, there's no way that less than 30 hours equals 48. The time it takes an individual member of Parliament to present amendments that are substantive and to go through the proper process with the apparatus of Parliament and have them translated is 48 hours in terms of your committee motion.

The Chair: Okay, your comments are well noted.

Ms. Elizabeth May: I am prepared to proceed. Thanks, Mr. Chair.

I will group all four because they all go to the same point. All four of my amendments, which I hope will be considered seriously, are to removing the ISDS provisions. They are all found, as you know, in chapter 9 of the CPTPP and they are more specifically found in chapter 9, part B.

I want to draw to your attention as a committee that it's not necessary for purposes of achieving all the tariff benefits, the trade benefits, with the countries within the TPP. We can argue about the benefits and the irregularity, depending on what sector you're looking at, but for the moment let's just say the trade benefits found in CPTPP are unchanged in Canada's application of that provision if ISDS is removed.

As a precedent I want to suggest to you that Canada has proceeded to ratify the comprehensive economic and trade agreement with the European Union, CETA, knowing full well that several European Union nations want to opt out of the investment chapter of that agreement.

Furthermore, recently Japan has negotiated a new trade agreement with the European Union, and they decided in the course of negotiations to leave out any investment chapter. Although it's become a dogma to expect an investment chapter in the context of a trade treaty, in the essence of trade agreements—which is liberation and open access to markets—investment treaties are not necessary for that, and again in the CETA, European nations have said they don't want to accept those provisions as they give increased rights, superior rights, to foreign corporations that are not available to domestic corporations.

In evidence to this committee—and it was a while ago, so I went back and reviewed the work of this committee and its excellent report in April 2017—you heard from a number of witnesses. Just to refresh your memory, my amendments today would meet the concerns of the Trade Justice Network, the Manitoba Federation of Labour, the Canadian Environmental Law Association, the NGO group Open Media, the Quebec Association for the Taxation of Financial Transactions for the Aid of Citizens, the Canadian Association of Physicians for the Environment, and the Canadian Cancer Society, and speaking as independent legal experts, York University law professor Gus Van Harten and University of Toronto law professor David Schneiderman. These are the people who spoke to the committee and expressed numerous concerns about the investor state dispute resolution.

You might be wondering why the amendment says “PV”.

• (1215)

[Translation]

It stands for “Green Party”. It may be because under Mr. Harper, someone thought that “G” could be taken to stand for “government”. So “PV” means “Green Party”.

We have amendments PV-1 to PV-4.

[English]

The amendments are all to the same effect: to remove the investment sections of the CPTPP. You can ask the officials again, but it will not affect the portions that you're most concerned about, the ones about getting in early and being able to start getting the tariff benefits for various sectors of the Canadian economy. This would just mean that in the future, a Malaysian corporation, for example, couldn't bring an investor dispute arbitration against Canada.

As you heard, and it's in your report in evidence, we are the most sued country in the developed world under the investment treaty of chapter 11 of NAFTA. We have lost many of those cases, and it was not because we were not following proper trade regimes because we have not.... For instance, in the S.D. Myers or Ethyl Corporation or Bileco cases, none of them were about Canadian government decision-making to advantage domestic corporations and prejudice foreign corporations. In other words, the animus isn't trade-related. They were acts taken by the Parliament of Canada or ministers of Canada, such as Environment Minister John Baird. They were decisions taken that were appropriate within our laws as a democracy, and later we find we owe millions of dollars to foreign corporations that don't deserve a dime.

Therefore, I beg you to seriously consider having a full debate on whether we should include an investment chapter when we don't have to.

Thank you.

The Chair: Thank you, Ms. May. Is there any more debate?

Go ahead, Mr. Hoback.

Mr. Randy Hoback: Mr. Christie, this is a major change to the agreement. If we were to proceed down this path and remove it, would it not involve your having to go back and renegotiate the agreement?

Mr. Bruce Christie: Absolutely. Three countries have ratified this treaty already. Any proposed amendments in the area of ISDS, which is a provision and a part of the investment chapter, is strongly supported by several of the CPTPP countries, so this proposed amendment would effectively make the ISDS provisions of the agreement inoperable.

• (1220)

The Chair: Thank you, sir.

Go ahead, Ms. Ramsey.

Ms. Tracey Ramsey: Thank you, Mr. Chair.

I'd like to offer support to my colleague from the Green Party. The New Democrats have been outspoken on this issue in the House. I've been outspoken at the committee about the importance of removing these regressive provisions that are a direct threat to our sovereignty and to our ability to protect our public in terms of their health and in terms of our environment.

This government has repeatedly said they have an agenda to move toward climate change. There's no mention whatsoever of climate change in this agreement, so there's no respect of the path that we're on in Canada—or the path we should be on, I should say, because clearly we're not on that path under the Liberal government.

We have been outspoken because we have become the most sued country in the world. We believe that this provision should be removed—

The Chair: Sorry; one second, please; we have a point of order here.

Mr. Randy Hoback: On a point of order, Chair, in history, when the committee goes through clause-by-clause study, when they come to a clause they don't like or want to amend, questions are presented to the witnesses. In both cases questions have not been presented to the witnesses. They've made more of an attempt to give their points of view, or in some cases lobby or stall. I would instruct the chair, at his will and under his guidance, that maybe we should get back to what is convention and go through the process of clause-by-clause consideration. If they do have questions for the witnesses, I would entertain those questions. If they're just taking the floor to speak, then I think they're wasting the committee's time.

The Chair: Thank you, Mr. Hoback. I don't think it's quite a point of order. Ms. Ramsey's always pretty quick. She has a comment. If we let her finish, we'll go from there.

Go ahead, Ms. Ramsey, and finish.

Ms. Tracey Ramsey: Thank you, Mr. Chair.

I'll continue to say that right now in negotiations in the U.S., there's a conversation about removing chapter 11, which we heard from one of the officials earlier. The original Canada-U.S. free trade agreement is where we began down this road, in talking about this investor state provision. The New Democrats support the removal of this provision from all trade agreements. Ms. May mentioned several countries that are doing this. India as well is in the process of removing it from all their trade and investment agreements, and won't sign on to any agreements with these provisions. There certainly is an argument to be had.

Some 400 witnesses appeared before us. Ms. May has mentioned some of the witnesses, the officials who submitted briefs, but in our public hearings where we had people from the general public come forward, ISDS was at the top of the list from people who came before us at the committee as we travelled across the country. They wanted to see this provision removed. It's disappointing to hear that at this point we can't remove it, that we would have to renegotiate the treaty to remove it. That it even appears here is regressive for Canada, and it's not the path that New Democrats believe we in Canada should be going down. I will offer my support to Ms. May in the removal of these provisions for the ISDS portion of this agreement.

The Chair: Thank you, Ms. Ramsey.

Seeing no more discussion on this amendment....

As you know this amendment falls together with PV-2, PV-3, PV-4. All in favour of the amendment—

Ms. Tracey Ramsey: Can I have a recorded vote?

The Chair: Yes, I guess we can. Go ahead.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: We're going to continue. We are at clause 8.

The Clerk: Yes, clause 8 is still open for debate or amendments.

The Chair: That's right.

(Clauses 8 to 10 inclusive agreed to)

(On clause 11)

The Chair: I think the NDP has an amendment on clause 11. Is that correct?

• (1225)

Ms. Tracey Ramsey: Yes. Thank you, Mr. Chair.

In this particular amendment, it's clear that we're not looking at a removal of this provision, which is something that I'm supportive of. I think it's unfortunate that we can't see a full removal of it, but what I'd like to propose in the amendment are some improvements to this process, because it is largely unaccountable.

The amendments I've put forward here would make the membership of the chapter 28 dispute resolution panels more broad-based and accountable. It wouldn't leave the power solely with the minister. The minister would have to refer to separate parties, separate bodies, and provide opportunities for public participation.

If Canada is going to continue down the path of including this type of investor-state provision, why is there not an attempt to

improve these provisions? Why isn't there an attempt to bring them into the public eye, as we heard from Ms. May and as I believe one of the officials referenced earlier said that others are doing? This really speaks to the ability, first of all, to remove that power essentially from one minister, a power that we think is not responsible or in the best interests of Canadians, but ultimately we would be able to have these panels, at a very bare minimum, be more broad-based and accountable, and as I said, provide those critical opportunities for public participation.

The main criticism we've heard, other than the cost and the cooling effect it has had on provincial legislation in trying to implement some things in Canada—and I'd say the cost in the cases is significant—is the fact that it's in secret. There is no ability for the public to engage in this process whatsoever, and I do not believe that Canadians support this type of secretive panel, appointed by the minister, meeting without Canadians having knowledge as to what we're being sued for, why we're being sued, and the amount we're looking at. That's anti-democratic.

This amendment speaks to that, and I hope I'll find some support for this amendment in the committee.

The Chair: Thank you, Ms. Ramsey.

Are there any comments on the amendment? I don't see any.

Ms. Tracey Ramsey: Chair, can we do a recorded vote again, please?

(Amendment negated: [See *Minutes of Proceedings*])

(Clause 11 agreed to)

Ms. Tracey Ramsey: We have a couple of other opportunities to get ready.

(On clause 12)

The Chair: Come on. Let's all stay focused here. We're on clause 12, and I see we also have an amendment on this clause.

Go ahead, Ms. Ramsey.

Ms. Tracey Ramsey: Thank you, Mr. Chair.

Again, this is an attempt to have some accountability, some transparency, for the expenses that will be required for this panel to exist and for this arbitration to happen. Obviously some funds are going to be required. The Canadian government should be transparent and open with Canadians about what those expenses are, and reporting is, I think, the best way to do that. I don't believe that what I'm putting forward would change the spirit of the wording or be opposed, but I will ask that question to the officials in a moment.

I think that within three months after the end of each year, the minister should lay before the House a report that sets out the expenses that have been incurred by the commission during that year. I believe Canadians strongly support open, transparent government. It's certainly something we've heard from this government, although there's been serious lack of it in their actions. This is an opportunity, I believe, for the government to show Canadians that they're serious about being accountable, being transparent with the money they're spending.

Canadians are not happy with some of the decisions the government has made recently with the public purse. This would be a way for the minister to very easily provide this to Parliament. I don't think it would infringe on any of the rights of the member states or countries that are involved in this agreement. It would be simply for our own domestic interest, so that we would know exactly how much this panel is costing us and exactly what's involved there.

Therefore, I'll ask the officials, before I close my remarks, if they view this particular amendment to be possible within this agreement.

• (1230)

Mr. Bruce Christie: I guess the short answer is that this amendment would effectively represent a unilateral amendment to the treaty; therefore, it would make it impossible for us to ratify the agreement if the amendment carried.

The Chair: Okay, sir.

Ms. Tracey Ramsey: Could you—

The Chair: I have some others who would like to speak on this amendment.

Ms. Tracey Ramsey: I have a follow-up question.

The Chair: Go ahead.

Ms. Tracey Ramsey: In what way could this be part of the CPTPP then, if it isn't allowed there?

Mr. Chair: I'm happy to offer the officials more time to revisit this, if you feel that would be appropriate. I think there were some comments they wanted to make.

The Chair: I think they're ready.

Ms. Tracey Ramsey: Do you have a definitive answer?

Ms. Kendal Hembroff: I just want to make sure we know which motion you're referring to, because I think Mr. Christie's answer was on motion 5. Are you now referring to motion 6?

Ms. Tracey Ramsey: Okay, hang on.

It's NDP-2, page 5. Do you have those?

Ms. Kendal Hembroff: Thanks.

To answer that question—because we are in a position where we could provide a reaction—our interpretation of the proposed amendment is that it would require Canada to not only publish its expenses but also to publish the expenses of all CPTPP parties.

Ms. Tracey Ramsey: No.

Ms. Kendal Hembroff: As it's worded, though, the amendment would require that, so we would not be comfortable making a decision on something like that unilaterally.

Mr. Randy Hobbak: Other countries would have to as well, not just Canada?

Ms. Kendal Hembroff: It would require us to publish the expenses of all parties, because....

The Chair: Okay, I have two of you.

Go ahead, Mr. Hobbak, if you have something quick. Then if Ms. Ramsey wants to, she can go back.

Mr. Randy Hobbak: I have a suggestion, then, because what you're saying might have implications for other countries.

This is something you could ask the Parliamentary Budget Officer to do on a yearly basis. You would provide the information to him on only the Canadian specifics. That probably would be more in his venue than tied to this agreement. Would that be fair to say?

I guess what I'm asking leads to what the role of the PBO is, but....

Ms. Kendal Hembroff: It is something we have not done in the past. It would represent a policy change, and that is something that, as officials sitting here at this exact second, we can't take a decision on. It would be something we haven't done before.

The Chair: That's all good.

Ms. Ramsey: do you have some final comments on your amendment?

Ms. Tracey Ramsey: I actually want to pose a question to the legislative clerk. I don't know if there's anything that the legislative clerks can offer, if there's any change that could be made to this amendment to have it only be reflecting Canada, to be a piece of our domestic policy as opposed to requiring all member states to do this within the agreement.

I mean, we are looking at the implementation of this agreement, and this is a Canadian bill in the Canadian Parliament, so what could we do legislatively to put this into the agreement?

The Clerk: If you wish to change the wording, you can, with the unanimous consent of the committee, withdraw the amendment. Alternatively, someone could move a subamendment or we could have a vote on it and then you could move a different one, with the wording that you prefer. I'm not in a position to give you a different wording right now.

Ms. Tracey Ramsey: Then am I able, Mr. Chair, to move a subamendment from the floor?

The Chair: My understanding is if you want to change your amendment, you would have to get agreement, I guess, and then you

Ms. Tracey Ramsey: Well, you mean then—

The Chair: —go back to the original amendment.

Ms. Tracey Ramsey: —unanimous consent to have this one—

• (1235)

The Clerk: That's the way it works.

Ms. Tracey Ramsey: —or do I put on a subamendment? Do I move for a subamendment or do I move unanimous consent to remove this?

The Clerk: Members cannot subamend their own—

Ms. Tracey Ramsey: Okay.

The Clerk: —motions.

There are two ways of doing it.

Ms. Tracey Ramsey: Okay.

The Clerk: One way is to have unanimous consent to withdraw it. The other is to vote on it and then propose a new one—

Ms. Tracey Ramsey: So, Mr. Chair—

The Clerk: —if it's defeated.

Ms. Tracey Ramsey: What we'll do is vote, and then I'll have to propose a new amendment from the floor.

The Chair: I guess so. I don't know if you need a notification. You can do that.

Ms. Tracey Ramsey: Wait, we just want clarity. You just said that we could vote on this and then bring a new amendment.

The Clerk: Yes; it has to be different, but yes.

Ms. Tracey Ramsey: How much of it has to be different?

Mr. Kyle Peterson: You can just withdraw it.

The Clerk: A single word is enough.

Ms. Tracey Ramsey: Okay. We'll vote to withdraw it, and then I'll bring another one forward.

The Chair: We don't need to vote to withdraw this. You're asking for a new one, right?

Ms. Tracey Ramsey: I just want to do this properly so that I can reintroduce it in the amended format.

The Clerk: From a procedural perspective, the amendment has been moved. Now it's before the committee.

The Chair: It's before the committee to discuss, yes.

The Clerk: There needs to be consent to remove it. If all members agree, we can just withdraw it and then we can move another one.

The Chair: Go ahead, Mr. Peterson.

Mr. Kyle Peterson: May I ask the officials a question?

My understanding is the NDP-2 amendment as drafted would be impractical to put into the agreement because it would affect other parties to the agreement. Is there any way to salvage this amendment with wording that wouldn't have an impact on the other parties? If there is no way to do it, there's no point in going through this procedural rigmarole. I'm just wondering: In your opinion, no matter what this says, is it still going to impact the other parties to the agreement and therefore prevent us from making any amendments in this regard?

Ms. Kendal Hembroff: I think the answer from our lawyer is that it really depends on how it would be worded. It is also possible that the Government of Canada could take a decision to voluntarily publish its expenses without it being written into the legislation. That's another way of looking at it.

Mr. Kyle Peterson: What part of the wording here engages the other parties? Is it just the definition of the commission in the agreement?

Mr. Hugh Cheetham: Yes. It's "incurred by the Commission".

Mr. Bruce Christie: There are 11 parties, including Canada.

Mr. Kyle Peterson: If we replace the word "commission" with "Canada"—

Mr. Hugh Cheetham: We wouldn't even know what this number is. We wouldn't have that information.

Mr. Kyle Peterson: Yes, we wouldn't be privy to that anyway.

The Chair: We're in sort of a foggy territory, but unless somebody has questions about the legislation and how we can deal with this, I'd like to bring it to a vote.

Go ahead, Mr. Carrie.

Mr. Colin Carrie: To the officials, are you aware of any other country that does this?

Mr. Hugh Cheetham: Not specifically.

Mr. Bruce Christie: I'm not aware of any publishing of their costs and expenses.

The Chair: Go ahead, Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Surrey—Newton, Lib.): The vote is to bring the revised motion, but not necessarily pass that motion, right?

The Chair: Right now, Ms. Ramsey has an amendment, but she wants to dump it. She needs unanimous consent to dump it or have it withdrawn, whatever you want to call it. If that works, her vision is to come back with another one.

Mr. Sukh Dhaliwal: Sure.

The Chair: If there's not unanimous consent to get rid of it, then we vote on it.

I'm going to ask: Is there unanimous consent for this vote to be taken off the table, to be withdrawn?

Mr. Sukh Dhaliwal: Yes.

The Chair: Okay.

Now we're moving on. You're back on the floor and you have a new amendment for us, right?

Ms. Tracey Ramsey: At this point, I need some input legislatively on what could possibly be in here. I need some information—

The Chair: Mr. Hoback, you have a point of order. Go ahead.

Mr. Randy Hoback: I wonder if we should let Ms. Ramsey have some time to think of the appropriate wording. Maybe we should skip this clause and come back to it on Tuesday.

The Chair: Do you want to skip this clause? There's another amendment—

Ms. Tracey Ramsey: No, we already voted on that. Ms. May put hers together with—

The Chair: We're on clause 12, right?

Mr. Kyle Peterson: We're parking clause 12.

The Chair: Do you want to park clause 12?

Ms. Tracey Ramsey: Yes.

The Chair: Well, technically the amendment is gone. You're coming with a new amendment on clause 12.

Ms. Tracey Ramsey: Yes.

The Chair: We're going to park clause 12, so we're on clause 13. There is a suggestion on clause 13 from Ms. Ramsey.

The Clerk: It's not on clause 13.

Ms. Tracey Ramsey: I have a question, though.

The Chair: I thought we were looking at subclause 13(1).

Go ahead.

Ms. Tracey Ramsey: I have a question on subclause 13(1) for the officials, and article 28.20. I wonder if you could explain this clause. I'm wondering if it's related to the suspension of the ISDS provision, or is it strictly state to state? Is there someone who can answer that?

• (12:40)

Mr. Hugh Cheetham: It's state to state, not ISDS.

Ms. Tracey Ramsey: Okay. Thank you.

The Chair: Go ahead, Mr. Peterson.

Mr. Kyle Peterson: I think we inadvertently skipped clause 13. We went to subclause 13(1).

The Chair: That's right. I went to subclause 13(1), so we're going to have to go back to clause 13, right? We're on clause 13(1).

Ms. Tracey Ramsey: I just had that question, and they said it's state to state. Now he's going to....

Mr. Kyle Peterson: That's subsequent to clause 13, right? We haven't treated it as clause 13 yet.

Ms. Tracey Ramsey: No.

The Chair: Technically we have to do clause 13 before we do subclause 13(1).

Shall clause 13 carry?

Ms. Tracey Ramsey: (Clause 13 agreed to on division)

The Chair: Now we're back to proposed new clause 13.1.

Did you already get your answer, Ms. Ramsey?

Ms. Tracey Ramsey: Yes. Now you're at my amendment. I had a question, and now I have an amendment.

The Chair: Okay.

Ms. Tracey Ramsey: Thank you, Mr. Chair.

Again, this amendment coming forward from the NDP is really about more transparency and accountability. It's about requiring an annual report on jobs, on the trade imbalance, and on non-tariff barriers.

In the first part we're asking for an analysis of the jobs created and jobs lost. We've had a lot of conversations at the trade committee about this. Certainly think tanks and groups come before us with economists who express their views on using one particular modelling type. They come forward to tell us their estimate of how many jobs will be created, but we really don't have a way to revisit that and to really understand whether that has happened, for good or bad. I think it would be really helpful and important for Canadians, and certainly for us as parliamentarians, to know the impact and to know whether jobs were actually created or lost out of this agreement, and where they were created or lost.

In this particular agreement, when we look at the report that came from Global Affairs economists, there is an acknowledgement, which we heard today from our officials, that there will be job losses in the auto sector in Canada. It's really just about wanting to reflect back on our agreements and to have a report that tells us whether we created jobs or lost jobs by having that analysis after the agreement.

The second part is about the balance of trade, and certainly the President of the United States has been railing about trade imbalances over the summer. Again, I think it's really incumbent

on us all to understand whether our trade balance with the countries we've signed agreements with is working. Is it something from which we're seeing a benefit?

In this week alone, a reporter from the CBC did a story on our own Stats Canada figures. A year after signing the European agreement, CETA, our trade has actually gone down. We have a tremendous volume of imports coming into the country, but overall we are actually exporting less than we were a year ago when we signed that agreement. Instead of reporters having to go out and chase these stories to put these pieces together for Canadians, I think it would be important to have a mechanism that would give us this annual report to tell us the state of our trading relationships with these other countries.

It's something we talk about at this table often. We speculate about it and wonder, and then we reflect back on where we've seen successes and where, unfortunately, we've seen losses. The amendment would put this more into effect so that we would have this annual report to the House of Commons so that we would have an understanding of that trade balance.

Lastly, this is a huge issue for us when we talk about non-tariff barriers. I can't count the number of people who have sat in front of this committee and said that tariffs are really meaningless to them at this point. It's about the non-tariff barriers, because yes, they have access to these countries, but they can't get into them. Then we see stories popping up, on a recurring basis, on our pulses and different agricultural products across our country, showing that they're being denied entry into a country with which Canada has a written agreement. They're being denied on the basis of non-tariff barriers.

I know that in the CPTPP there was an attempt to address some of these concerns with the committees that have been struck, but the committees themselves don't have teeth. They're not really able to resolve the issues brought forward before the committees.

I know that our agriculture sector in particular really suffers under these non-tariff barriers. It's been so significant to them that it's prevented them from seeing what is being touted as the benefit of these agreements, because essentially they end up at the doors of these countries or the ports of these countries and they're denied. They end up leaving perishable product sitting in ports all across the globe, the loss of which they can never recoup.

It's such a significant issue. It's really where we're going in terms of trade, because we're signing so many agreements in Canada in which the tariffs themselves are no longer the issue presented to us by the witnesses who come before us. It really is about the issue of non-tariff barriers. I think we have to start looking at them in a holistic way, and this report would at least allow us to understand and get a reflection from people who are exporting about what has happened in the year of the CPTPP: Where are we one year on? Do you think you've been able to get into these markets? Have you created jobs? Have you lost jobs? What is your balance of trade on a year-to-year ongoing basis?

• (1245)

That's the spirit of this. I hope to see support from members on the committee, because I do think this is a culmination of our work. We're looking to have an ability to understand better the impact of the trade agreements that we sit here and listen to, dig into, and try to understand. Certainly the TPP and now the current CPTPP have been the largest focus of our work over these past three years. We saw 400 witnesses. We travelled across the country. We spent an incredible amount of time on the report that Ms. May referred to earlier, which we brought before Parliament. We've been very engaged in this issue in the House of Commons. As opposition members, we raise on a constant basis the reports that come out in the media about how Canada is faring in terms of trade.

In that spirit, I hope to get support from my colleagues, and I will leave it at that.

The Chair: Thank you, Ms. Ramsey.

Is there any more discussion on this amendment? I see none.

All in favour of the amendment?

Ms. Tracey Ramsey: Could we have a recorded vote?

The Chair: Sure thing.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: There are no more amendments from clause 14 on, but when we had our information session with the officials here, there was some information that we could bring up on the clauses.

Mr. Christie, I think clause 14 could have a bearing on the information that we were looking for. Are you guys okay with that?

Mr. Bruce Christie: Yes.

The Chair: Do you want to repeat what you asked, Ms. Ramsey, or are we good to go?

Ms. Tracey Ramsey: Pardon me?

The Chair: The question that you had during the information session...?

Ms. Tracey Ramsey: Right.

The Chair: The officials are going to talk about it again. I don't think you need....

Ms. Tracey Ramsey: Yes. At the beginning of each section, could they give us an overview of...?

The Chair: Mr. Christie, you guys have the floor.

Ms. Kendal Hembroff: I will take the floor on this one.

Do you want me to go act by act, as opposed to giving an overview of all of them?

The Chair: Maybe I misunderstood. This was information that was required.

Ms. Tracey Ramsey: Yes.

The Chair: Okay. Go ahead.

Ms. Kendal Hembroff: How about I give a description of all of the amendments? Then, if there are specific questions, we could go into more detail. In fact, we have experts from some of the

departments that are specifically mandated with these particular acts, if you have more detailed questions.

Under the bill there are a number of amendments to Canadian statutes. One is the Export and Import Permits Act, which authorizes the Minister of International Trade Diversification to accept payments and to receive securities as specified by the minister in relation to an allocation method or import allocation.

There are also amendments to the Financial Administration Act, which authorizes the Governor in Council to issue directives to Crown corporations for the purpose of implementing the CPTPP.

There are also amendments to the Trade-marks Act to expand its application to goods that have a mark applied to them that is confusing with a registered trademark.

There are amendments to the Invest in Canada Act to extend Canada's net benefit review threshold of \$1.5 billion in enterprise value for non-state-owned enterprise investors to CPTPP parties.

There are amendments to the Customs Act to do three things: to authorize verification of the originating status of goods and withdrawal or denial of preferential tariff treatment; to implement provisions related to advance rulings; and to provide refunds of duties paid on goods from CPTPP parties for which preferential tariff treatment under the CPTPP was not claimed at the time of accounting.

There are amendments to the Commercial Arbitration Act to permit the submission of a claim by an investor of a CPTPP party on its own behalf and on behalf of an enterprise to the tribunal.

There are amendments to the Canadian International Trade Tribunal Act to empower the tribunal to undertake bilateral safeguard investigations.

Finally, there are amendments to the Customs Tariff to implement preferential tariff treatment for goods from CPTPP parties in domestic law and to implement provisions related to bilateral safeguard measures that may be imposed on goods of another CPTPP party.

• (1250)

The Chair: Thank you.

Are there any more comments on clause 14? Shall clause 14 carry?

Ms. Tracey Ramsey: On division

(Clause 14 agreed to on division [See *Minutes of Proceedings*])

The Chair: We have five minutes left. I don't see any amendments here.

Mr. Kyle Peterson: You haven't gone through the clauses.

Ms. Tracey Ramsey: You have to go through all these clauses.

Mr. Kyle Peterson: There are 55. We can group them.

Ms. Tracey Ramsey: No. I have some questions.

The Chair: We can still group them. I don't see them.

What's the first clause you have a question on?

Ms. Tracey Ramsey: The first one is on clause 17. If you want to go through them, when we get to them, I will identify that I have a question.

The Chair: I'm just going to go one by one.

Shall clause 15 carry?

Ms. Tracey Ramsey: On division.

The Chair: (Clause 15 agreed to on division [See *Minutes of Proceedings*])

The Chair: Shall clause 16 carry?

Ms. Tracey Ramsey: On division.

The Chair: (Clause 16 agreed to on division [See *Minutes of Proceedings*])

(On clause 17)

The Chair: Shall clause 17 carry?

Ms. Tracey Ramsey: I have a question regarding the Trade-marks Act.

You have added the line "any trade-mark that is confusing with a registered trademark". Can you explain why this language is added here? Can you comment on whether you foresee this change will impact how the Trade-marks Act applies to other non-CPTPP countries? Are we broadening the scope of the act in a significant way here?

Ms. Andrea Flewelling (Senior Policy Advisor, Marketplace Framework Policy Branch, Department of Industry): It seems there are three questions, the first being basically to explain the additional text.

Ms. Tracey Ramsey: Right.

Ms. Andrea Flewelling: There is a provision in the CPTPP. Article 18.76 relates to special requirements related to border measures. It states:

Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.

The amendment was required because the way the text in our Trade-marks Act was currently framed, the border measures, which were implemented through the Combating Counterfeit Products Act back in 2014, related to simply counterfeit goods, which meant goods that were exactly the same or so similar as to not be distinguishable from trademarked goods. This text here requires an expansion to cover confusingly similar trademarks that are not necessarily identical, but are confusingly similar.

The two amendments expand the application of these proceedings for interim custody, so essentially trademark owners can go to court to try to get shipments of goods detained when the goods not only have an inappropriately applied registered trademark but also have a potentially inappropriately applied trademark that is confusingly similar to the registered trademark.

Ms. Tracey Ramsey: This change goes beyond the CPTPP. This is really a change that will happen across the board. That's my other question. Does this impact other countries, non-CPTPP countries?

Ms. Andrea Flewelling: The amendment is to the Trade-marks Act, so it would apply to any goods being imported from any country, yes.

Ms. Tracey Ramsey: Do you see that we're broadening the scope in a significant way, or do you see this as a reflection of an update that's necessary? That's what I'm gleaning from your—

Ms. Andrea Flewelling: Certainly the Combating Counterfeit Products Act amendments were brought forth in 2014 in response to significant concerns with respect to counterfeit goods and the dangers, potentially, with counterfeit goods.

This amendment doesn't significantly increase the scope, because we're still looking at situations in which ordinary consumers would be confused and think that the illegitimate good was a legitimate good, potentially to their harm.

It's not a large change. In addition to that, the manner in which we have implemented, which we were able to do through the negotiated text in the agreement, is very discrete. In the case of these confusingly similar goods, the amendment we've made is merely to instances of a rights holder going to court to try to suspend a specific shipment that's coming through. That's as opposed to amendments to our broader border measures, which relate to counterfeit and pirated goods and the border guards are looking at all commercial shipments that are coming through. This is a very discrete amendment to a very discrete court proceeding that rights holders have access to.

Ms. Tracey Ramsey: Thank you.

• (1255)

Ms. Tracey Ramsey: Thank you.

The Chair: The Chair: Shall clause 17 carry?

(Clause 17 agreed to)

The Chair: Shall clause 18 carry?

(Clause 18 agreed to on division [See *Minutes of Proceedings*])

(On clause 19)

The Chair: Shall clause 19 carry?

Ms. Tracey Ramsey: I have a question.

The Chair: Okay.

Ms. Tracey Ramsey: On page 7, clause 19 looks like a very technical change to the Investment Canada Act, and you referenced it, Ms. Hembroff, in your remarks. Also, on page 83, in clause 48, we see another amendment to this act. I'm wondering if you can explain these changes.

Ms. Kendal Hembroff: We're just bringing forward our next person.

Ms. Tracey Ramsey: That's fine. I think what I'll say, then, while you're getting someone forward, is that under the original TPP, there was a lot of public concern about the changes that were happening in this act. The NDP raised them in the House. We're talking about the threshold for what foreign takeovers Canada would review. To us in the NDP, this clearly means there would be less oversight and more potential foreign takeovers.

My question, probably a sub-question, is this: what is the threshold now, and is it still increasing to \$1 billion next year? I think you referenced it in your opening remarks.

Mr. Mehmet Karman (Senior Policy Analyst, Investment Review Branch, Department of Industry) Regarding the first question, the threshold will be raised to \$1.5 billion for CPTPP countries, and that's for net benefit.

I just want to make it clear that there are two different kinds of reviews in the Investment Canada Act. There's net benefit and national security. In national security, there is no monetary threshold. Any investment can be reviewed for national security purposes, but for net benefit, you're right: a change in threshold from \$1 billion to \$1.5 billion would mean that an investment of, for example, \$1.2 billion would no longer be reviewed under net benefit from CPTPP countries.

As it relates to the second clause, clause 48, the purpose of that is a transitional provision, essentially. We discussed earlier about the timing of the CPTPP coming into force. If there was an investment being considered by the minister that had been made by—let's take as an example a Singaporean investor—between the time that they ratified the agreement, which has already happened, and by the time we ratify it, and that amount was again in that range, this transitional provision would be deemed to have not been filed. It would be

treated as if it was now below the threshold, which is the new higher threshold.

Ms. Tracey Ramsey: Okay.

Mr. Mehmet Karman: I'm hoping that I'm making myself clear.

Ms. Tracey Ramsey: I understand.

The Chair: Shall clause 19 carry?

(Clause 19 agreed to)

The Chair: Folks, we're going to stop there. It's been a very productive, busy day. We got up to 20 done. We've got about 30 more to do Tuesday, plus we're going to come back to clause 12 for Ms. Ramsey on Tuesday also.

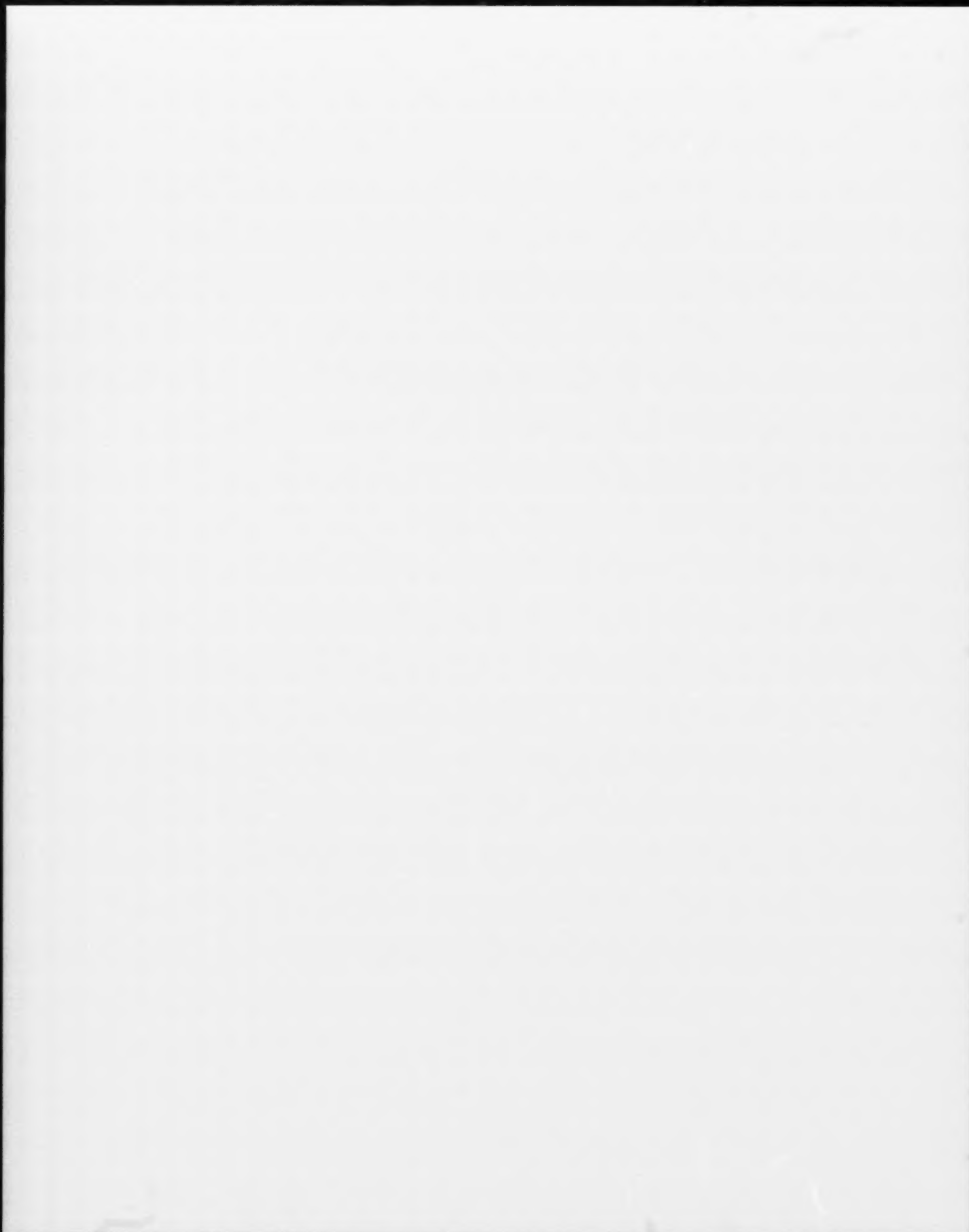
There's just a little bit of housekeeping here. There's some discussion of how we'll be dealing with things next week. Tuesday we're going to try to finish this. We're thinking of getting the witnesses on the tariffs on steel and aluminum starting Tuesday, October 2. That's when we're going to start with the witnesses. I encourage everybody to get their witnesses in. That leaves Thursday open next week, probably, and I think Simon has mentioned that he's going to have the Pacific Alliance Agreement ready for Thursday.

That said, we'll see you all Tuesday.

The meeting is adjourned.







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